U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33565037

Date: SEP. 30, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a periodontist, seeks classification as an individual of extraordinary ability in the sciences. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the statutory and regulatory definition of extraordinary ability. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner must either demonstrate a one-time achievement (that is, a major, internationally recognized award) or provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained

national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

Here, the Director concluded that the Petitioner meets three of the initial criteria: 8 C.F.R. § 204.5(h)(2)(iv) (judging the work of others), (v) (authorship of scholarly articles), and (ix) (high salary), which the record supports. In the final merits determination, however, the Director concluded that the Petitioner had not demonstrated her sustained national or international acclaim in the field of periodontics or shown that she is one of that small percentage at the very top of that field, and denied the petition accordingly. On appeal, the Petitioner submits a brief contending that the Director did not consider the record as a whole and ignored the Petitioner's more recent accomplishments. Upon review, we conclude that the record does not establish sustained national or international acclaim and demonstrate that the individual is among the small percentage at the very top of the field.

The Petitioner contends that in pointing out that most of her scholarly publication history and supporting evidence dated from 2015 to 2018, the Director failed to consider the totality of the record, which includes a scholarly article from 2023, as well as the fact that all of the petition support letters date from that year. We disagree. The Director did not ignore the Petitioner's most recent work, but correctly pointed out that nearly all of the Petitioner's scholarly production and acclaim occurred several years before the petition was filed. The statutory definition of extraordinary ability requires a person's acclaim to be sustained. Section 203(b)(1)(A)(i) of the Act. *See also* 8 C.F.R. § 103.2(b)(1) (stating that petitioners must establish eligibility for the requested benefit at the time of filing and continue to be eligible through adjudication). Contrary to the Petitioner's claims, the fact that she published her first article in 2015 and her last one in 2023 does not, in and of itself, establish that she sustained any level of acclaim for that entire period, and the remainder of the record does not contain sufficient evidence to establish that this is the case.

The fact that the Petitioner's support letters were written in 2023 also does not indicate that her acclaim has lasted through any particular timeframe. The support letters were all written by the Petitioner's coworkers, collaborators, and teachers, and they comprise nearly all of the evidence of the Petitioner's acclaim. It is generally expected that a researcher at the top of their field would garner acclaim over a sustained period from outside their immediate professional and personal circles, and that they would be able to provide evidence of that acclaim in forms other than letters, such as awards, media coverage, patents, and citation figures. *See generally* 6 *USCIS Policy Manual* F.2(B)(3), https://www.uscis.gov/policy-manual ("Letters of support, while not without weight, should not form the cornerstone of a successful claim for this classification. . . [and] should be corroborated by documentary evidence in the record"). The Petitioner has not provided such corroboration here.

For example, several of the support letters cite the Petitioner's doctoral research on the [redacted] protein as a highlight of her career and state that it received a great deal of acclaim, was widely cited, and provided groundwork for future studies on in vitro enamel growth and amelogenesis imperfecta. But beyond some contemporaneous coverage of the research in professional publications, the record does not include documentation of this research's acclaim. Nor does it show that the [redacted] research was

widely adopted or otherwise so influential in the field of periodontics that it would place the Petitioner at the very top of her field. Instead, much of the provided citation evidence consists of the Petitioner's co-authors self-citing as they develop their research, as well as review articles which provide a broad overview of developments in the field. Furthermore, as noted by the Director, the Petitioner's co-authors have substantially more citations than her, which does not indicate that she is at the top of her field. The Petitioner does not address this issue on appeal.

It is not apparent from the evidence provided that the Petitioner is one of that small percentage at the very top of her field or that she has sustained a national or international level of acclaim over time. The two media articles about the [redacted] protein research mention the Petitioner as one of the contributing researchers, but these articles are from eight years before the time of filing and do not establish that her research work has sustained that level of interest from others in her field over time. The fact that the Petitioner was a finalist in a 2021 research forum poster competition is notable, but given the much more extensive publication histories and honors of the coworkers who wrote her recommendation letters, the record does not establish that this constitutes a level of acclaim commensurate with being part of that small percentage at the very top of her field. Similarly, the Petitioner provided evidence that she performed peer review duties for two academic journals in 2023, but did not provide any evidence indicating that these journals are especially prestigious. In this context, the Petitioner's high salary as a practicing periodontist is insufficient to meet the Petitioner's burden of proof and establish her eligibility. *Matter of Chawathe*, 25 I&N Dec. at 376 (stating that the "preponderance of the evidence" standard requires us to examine each piece of evidence for relevance and probative value both individually and in the context of the totality of the evidence to determine whether the fact to be proven is probably true).

The totality of the record indicates that the Petitioner conducted promising research as a graduate student, and that she has resumed doing so in the last few years while also working as a periodontist. However, it does not indicate that she has received acclaim for this work on a national or international level over a sustained period of time. Section 203(b)(1)(A) of the Act. Nor does the record include extensive documentation showing that she has risen to the very top of her field. 8 C.F.R. § 204.5(h)(2). The petition will therefore remain denied.

ORDER: The appeal is dismissed.